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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/472,134	12/23/1999	BRUNO GIROUARD	PM-265136	8367

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EXAMINER

BOEHLER, ANNE MARIE M

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 03/14/2003

31

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/472,134

Applicant(s)

GIROUARD ET AL.

Examiner

Anne Marie M. Boehler

Art Unit

3611

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED **FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.**
Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on 25 November 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-49, 55, 58-61, 64-68, 73 and 76-92.

Claim(s) withdrawn from consideration: _____

8. ☒ The proposed drawing correction filed on 14 February 2003 is a) ☐ approved or b) ☒ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

10. ☐ Other: _____

Anne Marie M. Boehler
Anne Marie M. Boehler
Primary Examiner
Art Unit: 3611

Continuation of 2. NOTE: The amendments to claims 60, 61, 73, 84, 87, and 89 include changes which either narrow the scope of the claims (claims 60, 61, 89) or broaden the scope of the claims (cl. 73, 84, 87), which raised new issues requiring further consideration and search. The proposed amendment of claim 92 would be entered if submitted separately.

Continuation of 5. does NOT place the application in condition for allowance because: First, the finality of the November 14 Office Action is believed to be proper because it was in response to an amendment applicant filed after the first Office Action, that necessitated the new ground of rejection. The following discussion will address applicant's traversals of rejections that were in the final Office Action.

The proposed drawing change has not been approved because it incorporates new matter into the specification. Applicant's original disclosure showed and described a snowmobile embodiment that is entirely different from that of the priority document. Applicant's proposed drawing correction shows how substantial the differences are. Applicant's proposed drawing change would completely change the body structure of the vehicle originally disclosed in the present application. A large portion of the rear of the vehicle is trimmed off. The front end is pulled forward. The seat configuration is much shorter. The windshield is raised and moved forward and the cowl structure is very different. The position of the top end of the windshield was specified as being at point 166 in applicant's original specification. The height and angles relative to that point were described by applicant as being important aspects of the invention, yet the proposed drawing change would alter both the height and the angle of lines defined relative to that point. The priority document does not discuss the windshield in any way. The priority document does not appear to be concerned with the windshield configuration and particularly the way that air is channeled over the windshield (which was originally discussed and claimed in the present application). Finally, there is no support in applicant's specification for the combination of these embodiments and it is inconceivable that the various dimensions discussed and claimed in the present application are the same for both embodiments. Therefore, the drawings correction will not be entered.

According to MPEP 608.01(p)(1)(A)(2), incorporation by reference of essential matter in the specification to a foreign application or patent is improper. Applicant must amend the disclosure to include the material incorporated by reference and include an affidavit or declaration stating that the amendatory material consists of the same material incorporated by reference. However, even if applicant added the entire specification of the priority document into the specification of the present application, it would, at best, show one embodiment having a forward center of gravity, but it not provide support for the various aspects of applicant's presently claimed invention.

The rejection based on 35 USC 112, first paragraph is being maintained. Applicant's amendment will not be entered, as discussed above. Also, applicant cannot rely on the specification of a foreign document whose content has not been entered into the US application. Furthermore, the foreign document shows an alternative embodiment which is not combinable with and does not support the embodiment of the present application. As discussed in the final Office Action, the tunnel is not discussed in or shown by applicant's present disclosure. Also, the toe holds were not originally shown or discussed in any detail in applicant's disclosure. The drawings were amended to very schematically show the presence of toe holds, but not to depict any particular location of them. Indeed, any amendment that purports to show their exact location would be new matter because that feature was not included in the original disclosure.

Applicant's remarks regarding the rejection based on 35 USC 112, second paragraph are essentially the same as those already addresses in the Office Actions.

The rejection of claim 85 based on 35 USC 103 is withdrawn.

The rejection of claim 73 based on 35 102(b) is being maintained. Applicant argues that the drawings cannot be presumed to be to scale, so measurements taken therefrom cannot be used. However, the examiner is not relying on the drawings for the size of the features that may be shown, but rather for the relative angles between elements of the vehicle and the ground that are shown. Even though the disclosure of JP 2-214,618 does not discuss the angle of the footboards, the drawings explicitly show the footboards at an angle within the claimed range. The explicit showing of the drawings cannot be ignored because the words of the specification are silent on the issue. Therefore, the rejection is being maintained.